PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number (Optional) CM05023H	
CERTIFICATE UNDER 37 CFR 1.8(a) I hereby certify that this correspondence is being electronically transmitted on the date listed below: on: _____ May 7, 2009 _____	Application Number 11/634,561	Filed 08/05/2003
	First Named Inventor MICHAEL J. BRITTON	
Signature /ARMANDO AZADA/ _____ _____ ARMANDO AZADA _____ Typed or printed name	Art Unit 2416	Examiner CHERY, DADY

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheets(s).
      Note: No more than five (5) pages may be provided.

I am the

☐   applicant inventor.

☐   assignee of record of the entire interest.
     See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
     (Form PTO/SB/96)

☒   attorney or agent of record.
     Registraton number ___39505_____

☐   attorney or agent acting under 37 CFR 1.34.
     Registration number if acting under 37 CFR 1.34: _____

                                           /BARBARA R. DOUTRE/ _____
                                               Signature

                                       BARBARA R. DOUTRE _____
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                                          Telephone number

                                         May 7, 2009 _____
                                              Date

NOTE: Signatures of all the inventors or assignees or record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, se below*

☐   *Total of ___1___ forms are submitted.

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLN. NO.:   10/634,561   CONFIRMATION NO.: 6018

APPLICANT: Michael J. Britton   TC/ART UNIT: 2416

FILED: August 5, 2003   EXAMINER: Chery, Dady

TITLE: METHOD FOR MITIGATING COLLISIONS ON A DATA CHANNEL
                 UPON REQUEST FROM A SUBSCRIBER

CERTIFICATE UNDER 37 CFR 1.8(a)	
I hereby certify that this correspondence is being electronically transmitted on the date listed below:	
Date:	May 7, 2009
Signature	/Armando Azada/
Typed or printed name:	Armando Azada

REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Final Office Action dated December 17, 2008 and the Advisory Action dated March 18, 2009, Applicant respectfully files herewith a Notice of Appeal; and further Applicant requests review of the final rejection in the above-identified application before filing an appeal brief. A Petition for Extension of Time to respond, with fee authorization, is submitted concurrently herewith.

Related Appeals

The issues presented in the present application are not related to any pending appeal.

Status of the Claims

Claims 1-20 are pending in the present application.

REMARKS

Independent claims 1 and 7 stand rejected under 35 U.S.C. § 103(a) US 6078568 (Wright) in view of US 5740167 (Taketsugu).

The claimed subject matter of claim 1 involves a method for mitigating collisions on a data channel upon a request from a subscriber. The method occurs at the subscriber and includes transmitting a reassignment request to move to a new data channel at the subscriber, when the number of collisions reaches the threshold value thereby indicating that the data channel is fully utilized. The claimed subject matter of claim 7 includes receiving a reassignment request by a central processor from a subscriber to move from a first data channel and upon receipt of the reassignment request, assuming that the first data channel is loaded and the subscriber is unable to acquire sufficient bandwidth on the first data channel.

The Final Office Action on pages 3-4 states that "Regarding claim 1, Wright discloses a method (fig.4 and Fig. 21) comprising the steps of: at a subscriber: transmitting data on a data channel (Col. 4, lines 56 -58…); during the step of transmitting, tracking a number of collisions (Fig. 21, 132…) on the data channel until the number of collisions reaches a threshold value indicating that the subscriber is unable to acquire sufficient bandwidth on the data channel due to collisions with other transmitting subscribers on the data channel (Col. 4, lines 52 - lines 68 Col.6, lines 34 -39, Col. 7, lines 5 -29 and Col. 24, lines 62 -68, where… identifying a congested multiple access so that the traffic may routed to less heavily utilized channel is considered as the subscriber is unable to acquire sufficient bandwidth on the data channel due to collisions with other transmitting subscribers)." This analogy is, however, a mischaracterization of Wright.

Firstly, Wright teaches detecting the number of collisions on the reverse channel by the base station. See Wright, col. 24, lines 62-65. In contrast, Applicant's claim 1 explicitly describes performing "tracking a number of collisions" at the subscriber. Therefore, Wright does

not show or suggest "<u>at a subscriber</u>... during the step of transmitting, <u>tracking a number of collisions on the data channel</u>..." as recited by Applicant's claim 1.

The Office Action on page 4 further states that "Regarding claim 1... Wright fails to explicitly mention when the number of collisions reaches the threshold value, transmitting a reassignment request to move to a new data channel. However, Taketsugu teaches a method to select a new data channel when the packet collisions exceed a critical value as described the instant application (Fig. 5 and Col. 12, lines 36 – 39- claim 13)." This analogy is, however, a mischaracterization of Taketsugu.

Taketsugu discloses determining whether an error rate in a packet exceeds a threshold value <u>at a base station</u> and if the error rate exceeds a critical value, the base station sends a "select new channel signal" to the subscribers. See Taketsugu, col. 5, lines 1-3 and col. 12, lines 36-39. Taketsugu in **claim 13** (col. 12, lines 36-39) states that – "The method of claim 9, wherein said <u>base station sends</u> a select new channel signal to the terminals when the number of <u>terminal transmitted packet collisions exceeds a critical value</u>." Taketsugu is limited to teaching the <u>base station determines that the transmitted packet collisions exceeds a critical value.</u> Taketsugu's claim 13 clearly does not imply that the critical value check is being done at the subscriber. Also, **FIG. 2** of Taketsugu specifically shows that the "error rate threshold check" step 212 is performed <u>by the base station.</u> **FIG. 6** also clearly shows the error rate threshold check being performed (steps 212, 600) <u>at the base station</u>. Also, **FIG. 9** again shows the error check being made (step (915) <u>by the base station</u>. Clearly, Taketsugu does not disclose determining the number of collisions on the data channel <u>at a subscriber</u> and transmitting a reassignment request by the subscriber. Thus, Taketsugu does not show or suggest "<u>at a subscriber</u>... when the number of collisions reaches the threshold value, <u>transmitting a</u>

reassignment request to move to a new data channel" as recited by Applicant's independent

claim 1.

Further, the Final Office Action on pages 6 and 7 states that "Regarding claim 7...

Wright fails to explicitly mention when the number of collisions reaches the threshold value,

transmitting a reassignment request to move to a new data channel. However, Taketsugu teaches

a method to select a new data channel when the packet collisions exceed a critical value as

described the instant application (Fig. 5 and Col. 12, lines 36 - 39)." This analogy is, however, a

mischaracterization of Wright as well as Taketsugu.

Wright teaches regulating access to the reverse channel by increasing the number of

transmission attempts by subscriber devices which are prevented, if the collision is more and

increasing the percentage of transmission attempts by subscriber devices which are allowed, if

the collision on a reverse channel is less. See Wright, col. 4, line 56 - col. 5, line 14. Taketsugu

also clearly discloses sending a "select new channel signal" to the subscribers by the base

station, when the error rate exceeds a critical value at the base station. See Taketsugu, col. 5,

lines 1-3 and col. 12, lines 36-39. Therefore, neither Wright nor Taketsugu teaches receiving a

reassignment request from a subscriber to move from a first data channel. Subsequently, because

Wright and Taketsugu do not teach "receiving a reassignment request," they also do not teach

taking any further action or assuming anything "upon receipt of the reassignment request."

Therefore, Wright and Taketsugu do not show or suggest "receiving a reassignment request from

a subscriber to move from a first data channel" and "upon receipt of the reassignment request by

a central processor, assuming that the first data channel is loaded and the subscriber is unable to

acquire sufficient bandwidth on the first data channel" as recited by Applicant's claim 7.

Therefore, the combination of Wright and Taketsugu does not teach or suggest the

limitation of "at a subscriber... tracking a number of collisions on the data channel until the

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number of collisions reaches a threshold value <u>indicating that the subscriber is unable to acquire</u>

<u>sufficient bandwidth</u> on the data channel due to collisions with other transmitting subscribers on

the data channel… when the number of collisions reaches the threshold value thereby indicating

that the data channel is fully utilized, <u>transmitting a reassignment request to move to a new data</u>

<u>channel</u>" as recited by independent claim 1 and "<u>receiving a reassignment request from a</u>

<u>subscriber</u> to move from a first data channel" and "<u>upon receipt of the reassignment request by a</u>

<u>central processor, assuming that the first data channel is loaded and the subscriber is unable to</u>

<u>acquire sufficient bandwidth on the first data channel</u>" as recited by independent claim 7.

Accordingly, Applicant respectfully submits that claims 1 and 7 are patentable.

Further, Applicant maintains that claims 2-6 and 8-20 are patentable by virtue of their

dependency on claims 1 and 7, respectively.

<u>Conclusion</u>

In view of the foregoing remarks, it appears Claims 1-20 have been erroneously rejected.

Applicants request the reconsideration of this application and the timely allowance of the

pending claims.

Respectfully submitted,

May 7, 2009

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